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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FRANK JOSEPH CARDERELLA,) Case No. CV 09-8299-R (MANx)
Plaintiff,)
) DECLARATION OF FRANK
vs.) JOSEPH CARDERELLA IN
) OPPOSITION TO DEFENDANT'S
JANET NAPOLITANO, as Secretary) MOTION FOR SUMMARY
of the Department of Homeland) JUDGMENT OR ALTERNATIVELY
Security) SUMMARY ADJUDICATION
)
Defendant.)
)
)
)

1. I am the Plaintiff in the above-referenced matter. I have personal knowledge of the foregoing and if called as a witness, I could and would testify competently thereto.

1 2. I am a white Catholic male of Italian descent and provided such
2 information, as requested, on the United States Government job application form.

3 3. I worked for the United States Bureau of Prisons from 1991-1996 as a
4 Correctional Officer and as a Case Manager. Both of these positions were and are
5 classified as Law Enforcement Officers for retirement purposes which allowed me
6 to be eligible to receive the benefits of a specific law enforcement retirement plan.
7 Positions that allow the occupier of such positions to be eligible for such specific
8 retirement plans are commonly referred as "covered" positions.

9 4. In November 1995, I applied at the U.S. Immigration and
10 Naturalization Service ("INS") for the position of Deportation Enforcement
11 Officer ("DEO") in Los Angeles, California and received a telephonic interview in
12 May 1996 with Rafael Roldan (Hispanic, Caribbean/South American national
13 origin, a male, a Roman Catholic), deportation officer, GS1801-12, Detention and
14 Deportation Branch, L.A. District, and with Denise Lopez (Black, U.S. national
15 origin, female, nondenominational), deportation officer, GS1801-12, Detention
16 and Deportation Branch, L.A. District. The interview consisted of only job and
17 performance related questions. I am informed and believe and based on such
18 information and belief allege that Mr. Roldan and Ms. Lopez recommended me for
19 the subject position. While this application was being considered, I was hired by
20 INS as an Immigration Inspector, which was not a Law Enforcement Officer
21 "covered" position, and was assigned to the San Ysidro Port of Entry, at the
22 U.S./Mexico border.

23 5. A DEO is a "covered" position and I was willing to take a pay cut in
24 order to qualify for that "covered" position.

25 6 On September 15, 1996, the selecting official, Beverly Wilson (Black,
26 U.S. national origin, female, nondenominational), Deputy Assistant District
27 Director for Detention and Deportation, GS-14, L.A. District office, did not select
28 me for the position because of my race (white), religion (Catholic), sex (male), and

1 national origin (Italian), but selected at least one other applicant for the position.
2 U.S. Immigration and Customs Enforcement, formerly the INS denied me the
3 position of DEO GS-7, and continued to deny me this position for some time.

4 7. As of September 15, 1996, and at all times herein mentioned, I was in
5 all respects qualified for the position of DEO based on the following:

- 6 a. Bachelor of Arts Degree (Physical Education), California State
7 University, Long Beach, Ca. (May 1988).
- 8 b. Masters of Science Degree (Criminal Justice), California State
9 University, Long Beach, Ca. (December 1992
- 10 c. Correctional Officer, Federal Bureau of Prisons, Federal
11 Correctional Institution (FCI), Terminal Island, California. 6/91-
12 3/94, GS-7/3;
- 13 d. Case Manager, Federal Bureau of Prisons, FCI Terminal Island,
14 California, 3/93-2/96, GS-11/1;
- 15 e. Special Operations Response Team (S.O.R.T.), Federal Bureau of
16 Prisons, FCI, Terminal Island, California, 9/93-2/96, GS-11/1;
- 17 f. Completion of the Immigration Officer Basic Training Course
18 Phase I. Federal Law Enforcement Training Center, Charleston,
19 South Carolina, June 1996.
- 20 g. Completion of the Immigration Officer Basic Training Course
21 Phase II. Federal Law Enforcement Training Center, Glynco,
22 Georgia, September 1996.
- 23 h. Immigration Inspector, U.S. Immigration and Naturalization
24 Service, March 1996-December 1997, GS-11/1, San Ysidro,
25 California (Port of Entry);

26 8. Without applying, I was offered the position of Special Operations
27 Inspector, Los Angeles International Airport in September 1997. This was
28 basically the equivalent of a supervisory position, but was turned down by me

1 because the assignment was not to a "covered position."

2 9. On September 25, 1996, I made my first contact with an Equal
3 Employment Opportunity counselor regarding discrimination. On January 29,
4 1997, I filed a complaint of discrimination with the U.S. Department of Justice-
5 Immigration and Naturalization Service-Office of Equal Employment Opportunity
6 (hereinafter the "Complaint"). A true and correct copy of this written Complaint
7 is attached hereto as Exhibit A and incorporated herein by reference as though set
8 forth in full. That Complaint was timely filed, under Title VII of the United States
9 Civil Rights Act of 1964, as amended, Title 42 United States Code 2000e-5.

10 10. By letter dated April 24, 1997, the U.S. Department of Justice-
11 Immigration and Naturalization Service-Office of Equal Employment Opportunity
12 acknowledged receipt of the Complaint noting it has been assigned number I-97-
13 0109 and had been accepted for investigation on the basis of race (white), religion
14 (Catholic), sex (male) and national origin (Italian). A true and correct copy of the
15 letter of said date is attached hereto as Exhibit B and incorporated herein by
16 reference as though set forth in full.

17 11. An investigation was conducted on the Complaint and, based upon
18 that investigation, a report was issued on or about December 14, 1998, a true and
19 correct copy of which is attached hereto as Exhibit C and incorporated herein by
20 reference as though set forth in full.

21 12. On or about December 29, 1998, I received, from the US Department
22 of Justice Immigration and Naturalization Service Office of Equal Employment
23 Opportunity, notice of the right within 30 days of receipt of such correspondence
24 to request a hearing or a final agency decision without a hearing based on the
25 existing Complaint. A true and correct copy of the December 29, 1998 letter is
26 attached hereto as Exhibit D and incorporated herein by reference as though set
27 forth in full.
28

1 13. On January 24, 1999, in response to said letter, I notified in writing
2 The Acting Director of Office of Equal Employment Opportunity US Immigration
3 and Naturalization Service of my request for a final agency decision without a
4 hearing. True and correct copies of the January 24, 1999 letter requesting a final
5 decision without hearing together with proof of mailing and a receipt are attached
6 hereto as Exhibit E and incorporated herein as though set forth in full.

7 14. By letter dated December 18, 2007 my attorney John A. Stillman
8 (hereinafter "Mr. Stillman") of Good Wildman Hegness & Walley, advised US
9 Immigration and Customs Enforcement EEO Complaints Program Management
10 Office-Twin Cities (Judy Maltby) that I had not received any response whatsoever
11 to my January 29, 1999 request for a final decision without hearing. True and
12 correct copies of Mr. Stillman's December 18, 2007 letter with proof of mailing
13 and a receipt are attached hereto as Exhibit F and incorporated by reference herein
14 as though set forth in full.

15 15. By letter dated August 1, 2008, Mr. Stillman received a letter from
16 Ramona S. Hill, acting EEO Manager, Formal Complaint Center Office of Equal
17 Employment Opportunity for US Immigration and Customs Enforcement, a true
18 and correct copy of which is attached hereto as Exhibit G and incorporated herein
19 by reference as though set forth in full, wherein Ms. Hill informed Mr. Stillman
20 that the office is unable to locate my Complaint and requested that I submit a copy
21 of the report of investigation generated in my claim as well as any other relevant
22 documentation within 15 calendar days of the August 1, 2008 letter, to Gerald
23 Rock, Contract EEO Specialist, U.S. Immigration and Customs Enforcement
24 Office of Equal Employment Opportunity Formal Complaint Center. In response,
25 by letter dated August 12, 2008 I forwarded to Gerald Rock, my letter of
26 representation, a copy of the report of investigation and other relevant
27 documentation. True and correct copies of the August 12, 2008 letter with
28

1 evidence of receipt are attached hereto as Exhibit H. and incorporated herein by
2 reference as though set forth in full.

3 16. On September 8, 2008, both my attorney and I were copied with a
4 memo from Ramon S. Hui, Acting EEO Manager to Daniel Sutherland Officer for
5 Civil Rights and Civil Liberties Department of Homeland Security, instructing Mr.
6 Sutherland, "Pursuant to Complainant's request dated January 24, 1999, please
7 issue a final agency decision (F.A.D.) on the legacy Department of Justice (DOJ),
8 Immigration and Naturalization Service discrimination complaint captured above."
9 A true and correct copy of the September 8, 2008 memorandum is attached hereto
10 as Exhibit I and incorporated herein by reference as though set forth in full.

11 17. On January 15, 2009, Mr. Stillman informed Stephen T. Shih.Esq.
12 Deputy Officer Equal Employment Opportunity Program Office for Civil Rights
13 and Civil Liberties that I had still not received any final decision without hearing
14 on my discrimination Complaint. Mr. Stillman provided me with a copy of the
15 January 15, 2009 letter. A true copy of which is attached hereto as Exhibit J and
16 incorporated herein by reference as though set forth in full.

17 18. On August 7, 2009, Mr. Stillman wrote to the Department of
18 Homeland Security and in particular to Stephen T. Shih. Esq. Deputy Officer,
19 Equal Employment Opportunity Program, Office for Civil Rights and Civil
20 Liberties to inquire as to the status of the Final Agency Decision and was advised
21 by letter dated October 2, 2009 that a decision would be issued as soon as possible.
22 Mr. Stillman provided me with copies of this correspondence. True and correct
23 copies of the August 7th letter and the October 2nd response is attached hereto as
24 Exhibit K and Exhibit L and incorporated herein by reference as though set forth in
25 full.

26 19. As of the date of filing of this Declaration, I still have not received a
27 final decision without hearing on my discrimination Complaint.
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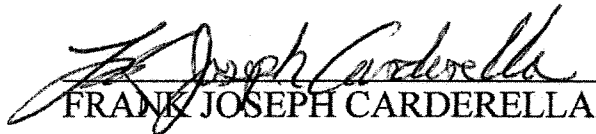
1 20. The INS's non-selection of me for the position of DEO has caused me
2 losses of retirement credits, pension rights and other benefits from the date of
3 September 15, 1996 until paid.

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7 I declare under penalty of perjury under the laws of the United States of
8 America that the foregoing is true and correct and that this declaration was
9 executed this 30th of August of 2010.

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12 FRANK JOSEPH CARDERELLA
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